

**ENTERED**

October 21, 2021

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

KATERRA INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 21-31861 (DRJ)  
)  
) (Jointly Administered)  
)**ORDER (I) APPROVING THE DISCLOSURE STATEMENT  
AND (II) CONFIRMING THE AMENDED JOINT CHAPTER 11  
PLAN OF KATERRA INC. AND ITS DEBTOR SUBSIDIARIES**The above-captioned debtors (collectively, the “Debtors”) having:

- a. commenced, on June 6, 2021 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);<sup>2</sup>
- b. continued to operate their businesses and manage their properties as debtors in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed, on the Petition Date, the *Declaration of Marc Liebman in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 37] and the *Declaration of Matthew R. Niemann in Support of (A) DIP Financing and (B) All First Day Relief* [Docket No. 40] (together, the “First Day Declarations”), detailing the facts and circumstances of the Chapter 11 Cases;
- d. filed, on August 13, 2021, the Plan [Docket No. 851], the *Disclosure Statement for the Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 852] (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, the “Disclosure Statement”), and the *Debtors’ Emergency Motion for Entry of an*

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/katerra>. The location of Debtor Katerra Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 9305 East Via de Ventura, Scottsdale, Arizona 85258.

<sup>2</sup> Capitalized terms used but not otherwise defined in these findings of fact, conclusions of law, and order (collectively, this “Confirmation Order”) have the meanings given to them in the *Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, the “Plan”). The rules of interpretation set forth in Article I.B of the Plan apply to this Confirmation Order.

*Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of the Ballot and Notices in Connection Therewith, and (IV) Approving the Scheduling of Certain Dates in Connection with Confirmation of the Plan* [Docket No. 853] (the “Disclosure Statement Motion”);

- e. filed, on August 24, 2021, the *Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 908] and the *Disclosure Statement for the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 909];
- f. filed, on August 24, 2021, a revised *Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of the Ballot and Notices in Connection Therewith, and (IV) Approving the Scheduling of Certain Dates in Connection with Confirmation of the Plan* [Docket No. 912];
- g. obtained, on August 26, 2021, entry of the *Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of the Ballot and Notices in Connection Therewith, and (IV) Approving the Scheduling of Certain Dates in Connection with Confirmation of the Plan* [Docket No. 938] (the “Conditional Disclosure Statement Order”), which conditionally approved the Disclosure Statement, voting and solicitation procedures (the “Solicitation Procedures”), and related notices, forms, and ballot (collectively, the “Solicitation Packages”), and related dates and deadlines;
- h. filed, on August 26, 2021, the *Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 943], revised *Disclosure Statement for the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 944], and a further revised *Disclosure Statement for the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 946];
- i. caused the Solicitation Packages, the *Notice of (A) Deadline to Cast Votes to Accept or Reject Joint Chapter 11 Plan for the Debtors, (B) Combined Hearing to Consider Approval of Disclosure Statement and Confirmation of Plan, (C) Deadline to Object to Confirmation, and (D) Related Matters and Procedures* (the “Combined Hearing Notice”), which informed parties-in-interest of notice of the date and time set for the hearing to consider approval of the Disclosure Statement and confirmation of the Plan (the “Combined Hearing”), to be distributed on or about August 31, 2021 (the “Solicitation Date”), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Conditional Disclosure Statement Order, and the

Solicitation Procedures, as evidenced by, among other things, the *Certificate of Service re: Solicitation Materials* [Docket No. 1282] (the “Solicitation Affidavit”);

- j. caused to be served, on or about August 31, 2021, the *Non-Voting Status Notice With Respect to Unimpaired Classes Presumed to Accept the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries and Opt Out Releases* (the “Notice of Unimpaired Non-Voting Status”) on all holders or potential holders of Claims in Unimpaired non-voting Classes;
- k. caused to be served, on or about August 31, 2021, the *Non-Voting Status Notice With Respect to Impaired Classes Presumed to Reject the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries and Opt Out Releases* (the “Notice of Impaired Non-Voting Status” and, together with the Notice of Unimpaired Non-Voting Status and the Combined Hearing Notice, the “Non-Voting Status Notices”) on all holders or potential holders of Claims or Interests in Impaired non-voting Classes;
- l. caused to be published, on August 31, 2021, the Combined Hearing Notice in the national edition of *The New York Times*, as evidenced by the *Affidavit of Publication* [Docket No. 1004] (the “Publication Affidavit”);
- m. filed, on September 1, 2021, the further revised *Disclosure Statement for the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 979];
- n. filed, on September 16, 2021, the *Notice of Filing of Plan Supplement for the Amended Joint Chapter 11 Plan of Kattera Inc. and Its Debtor Subsidiaries* [Docket No. 1047] (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, the “Plan Supplement”);
- o. filed, on September 17, 2021, an amendment to the Plan Supplement [Docket No. 1054];
- p. filed, on September 23, 2021, a second amendment to the Plan Supplement [Docket No. 1086];
- q. filed, on September 29, 2021, the *Notice of Adjournment and Reset of Confirmation Hearing and Extension of Voting Deadline* [Docket No. 1137] (the “Reset Notice”), which (i) informed parties-in-interest of the reset date and time set for the Combined Hearing and (ii) extended the Voting Deadline to October 11, 2021 at 4:00 p.m. (prevailing Central Time) (the “Extended Voting Deadline”);
- r. filed, on October 4, 2021, the *Notice of Modified Date for Filing Voting Report* [Docket No. 1197], which informed the Bankruptcy Court and parties-in-interest that, in conjunction with the Extended Voting Deadline, the Debtors would file the Voting Report (as defined herein) on October 15, 2021 or four days after the Extended Voting Deadline;

- s. filed, on October 15, 2021, the *Declaration of Alex Orchowski of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1309] (the “Voting Report”), which accounts for ballots received up to the Extended Voting Deadline;
- t. filed, on October 19, 2021, the *Declaration of Marc Liebman, Chief Transformation Officer of Katerra Inc., in Support of the (I) Approval of the Disclosure Statement and (II) Confirmation of the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1333] (the “Liebman Declaration”) and the *Declaration of Jay Weinberger in Support of (I) Approval of the Disclosure Statement and (II) Confirmation of the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1322] (the “Weinberger Declaration” and, together with the Liebman Declaration, the “Declarations”);
- u. filed, on October 19, 2021, a further revised *Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1338];
- v. filed, on October 19, 2021, the *Proposed Order (I) Approving the Disclosure Statement and (II) Confirming the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1339];
- w. filed, on October 20, 2021, a third amendment to the Plan Supplement [Docket No. 1358];
- x. filed, on October 20, 2021, the *Debtors’ Memorandum of Law in Support of (I) Approval of the Disclosure Statement and (II) Confirmation of the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1359] (the “Confirmation Brief”);
- y. filed, on October 21, 2021, a fourth amendment to the Plan Supplement [Docket No. 1364];
- z. filed, on October 21, 2021, a further revised *Proposed Order (I) Approving the Disclosure Statement and (II) Confirming the Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 1365];

This Bankruptcy Court having:

- a. entered the Conditional Disclosure Statement Order on August 26, 2021 [Docket No. 938];
- b. set September 24, 2021, at 4:00 p.m. (prevailing Central Time) as the deadline to vote on the Plan, which was extended to October 11, 2021, at 4:00 p.m. (prevailing Central Time) pursuant to the Reset Notice;

- c. set September 24, 2021, at 4:00 p.m. (prevailing Central Time) as the deadline to file objections to the Disclosure Statement and the Plan (the “Objection Deadline”);
- d. set September 30, 2021, at 9:00 a.m. (prevailing Central Time) as the date and time for the commencement of the Combined Hearing in accordance with Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code, which was adjourned and reset to October 21, 2021, at 2:30 p.m. (prevailing Central Time) pursuant to the Reset Notice;
- e. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Declarations, the Voting Report, and all pleadings, exhibits, declarations, affidavits, statements, responses, and comments regarding approval of the Disclosure Statement and Confirmation of the Plan, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- f. held the Combined Hearing on October 21, 2021 at 2:30 p.m. (prevailing Central Time);
- g. heard the statements and arguments made by counsel with respect to approval of the Disclosure Statement and Confirmation of the Plan;
- h. considered all oral representations, live testimony, written direct testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- i. made rulings on the record at the Combined Hearing (the “Confirmation Ruling”);
- j. overruled (i) any and all objections to approval of the Disclosure Statement and Confirmation of the Plan, except as otherwise stated or indicated on the record, and (ii) all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- k. taken judicial notice of all papers and pleadings filed in the Chapter 11 Cases.

NOW, THEREFORE, the Bankruptcy Court having found that notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and/or Confirmation of the Plan have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the record of the Chapter 11 Cases and the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and Confirmation of the Plan and presented at the Combined Hearing including, without limitation, the Declarations, establish just cause for the

relief granted in this Confirmation Order; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact, conclusions of law, and order:

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS HEREBY FOUND AND DETERMINED THAT:

**A. Findings and Conclusions**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction and Venue**

2. This Bankruptcy Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

**C. Eligibility for Relief**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases**

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 33], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly



administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

**E. Appointment of the Creditors' Committee**

5. On June 22, 2021, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 210] (the "Committee").

**F. Adequacy of the Disclosure Statement**

6. The Disclosure Statement contains "adequate information" (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, the Wind Down, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b), and the Disclosure Statement, the Plan, and the Non-Voting Status Notices provided all parties-in-interest with sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c).

**G. Plan Supplement**

7. On September 16, 2021, the Debtors filed the Plan Supplement with the Bankruptcy Court. On September 17, 2021, the Debtors filed an amended Plan Supplement. On September 23, 2021, the Debtors filed a second amended Plan Supplement. [On October 19, 2021, the Debtors filed a third amended Plan Supplement.] The Plan Supplement complies with the terms of the Plan, and the Debtors provided good and proper notice of the filing of the Plan Supplement in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Conditional Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases.

**XX. Waiver of 14-Day Stay**

153. Notwithstanding Bankruptcy Rule 3020(e), and to the extent applicable, Bankruptcy Rules 6004(h), 7062, and 9014, this Confirmation Order is effective immediately and not subject to any stay.

**YY. Final Order**

154. This Confirmation Order is a Final Order and the period in which an appeal must be filed will commence upon entry of this Confirmation Order.

**Signed: October 21, 2021.**



DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE